



February 28, 2000

Ms. Janice Marie Wilson
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR2000-0731

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132489.

The Texas Department of Transportation (the "department") received a request for the lists of proposed projects submitted to the department for the Statewide Transportation Enhancement Program. You claim that the information you have submitted as Exhibit B is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, you explain that the responsive information consists of two lists of recommendations of projects eligible to receive funds from the enhancement program. One list consists of recommendations made by department staff; the other recommendations are made by the Transportation Enhancement Project Evaluation Committee (the "committee"), which is an advisory committee of the department. This committee is comprised of representatives from various state agencies. You indicate that the committee's recommendations list has been released by someone from a member agency. Additionally, you inform us that the staff's recommendation list has been released against agency policy by a staff employee. You argue that such releases do not act to waive the department's claim that the information is excepted from disclosure pursuant to section 552.111 of the Government Code. Prior decisions from our office have concluded that involuntary disclosure of information on a limited basis through no official action and against the wishes and policy of the governmental body does not waive exceptions under the Public Information

Act. *See* Open Records Decision Nos. 387 at 3 (1983), 376 at 2 (1983). *But see* Open Records Decision No. 400 (1983) (voluntary release of information waives governmental body's claim under predecessor to section 552.111). In the instant matter, we agree that the department has not waived its claim pursuant to section 552.111 of the Government Code as a result of the prior release of the submitted information. Accordingly, we will now determine whether section 552.111 excepts the submitted information.

You claim that the committee and staff recommendations are excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. In this instance, we believe that the submitted information reflects the opinion, advice or recommendations on a department policy matter. Thus, the department may withhold the submitted information from disclosure under section 552.111.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report

that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ch

Ref: ID# 132489

Encl. Submitted documents

cc: Ms. Shirlee Gandy
Ron Investments
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(w/o enclosures)